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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,251	09/29/2003	William H. Berger		3183
	7590	03/17/2006		
Ruth Eure 4795 Edison Avenue Boulder, CO 80301			EXAMINER FETSUGA, ROBERT M	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/674,251	Applicant(s) BERGER, WILLIAM H.	
	Examiner Robert M. Fetsuga	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8,9 and 11-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8,9 and 11-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. The proposed drawing correction filed on February 06, 2006 is disapproved as not complying with 37 CFR 1.121(d).

2. The drawings are objected to because reference numeral "30" denotes different elements in Figs. 5 and 7, reference numeral "32" denotes different elements in Figs. 5-7, material cross-hatching is inaccurate in Fig. 6, there is no "Fig. 1" (Rule 1.84(u)(1)), reference numeral "20" apparently should be deleted from Fig. 5, and material cross-hatching is missing from Fig. 7. The proposed change (not discussed) of "Fig. 9" to --Fig. 1-- would correct the Rule 1.84 problem provided corresponding changes were made to the specification. The proposed change of "32" to --40-- in Fig. 7 would correct the noted problem provided corresponding changes were made to the specification. The proposed change (not discussed) of deleting material cross-hatching from the cross-sectional view of Fig. 6 clearly does not correct the noted problem. Applicant argues at page 5 of the response filed February 06, 2006 the use of reference numeral "30" is correct. The examiner can not agree. The element denoted in Fig. 5 is the outlet nipple of the prior art pump (compare with the cited web-page), but the element denoted in Fig. 7 appears to be an inlet to a nozzle 16.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in

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the claims. Therefore, the subject matter set forth in claims 2 and 14, and the "intake portion" and "outlet portion" set forth in claims 12 and 13, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Applicant did not substantively address this objection in the response.

, Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required

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corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "parallel circular disc sides" set forth in claim 2 and "method" language set forth in claim 16, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

Applicant argues at page 5 of the response the discs are found at "paragraph 29". Notwithstanding the absence of any "paragraph" numbering in the instant specification, the term found at page 8, lines 9-10, does not reference the drawings.

4. The disclosure is objected to because of the following informalities: Page 8, line 9 and page 9, line 8, "32" designates different elements; and Fig. 7 should be described as a cross-sectional view analogous to Fig. 6.

Appropriate correction is required.

Applicant did not substantively address the page 8 objection in the response.

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5. Claims 1-6, 8, 9 and 11-16 are rejected under 35

U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Implementation of the "water moving apparatus" set forth in claim 1 is neither disclosed nor evident to the examiner. The "outlet port" of the pump as illustrated in Fig. 5 does not appear capable of directing water toward the vanes as illustrated in Fig. 7. The structure of the paddle wheel to enable it to rotate is not disclosed. The pump as presented on the ITT Industries web site has been reviewed, but does not clarify the disclosure. A copy of a page from the website is included herewith.

Applicant argues at pages 6-7 of the response the flow of water is illustrated in Figs. 5-7. However, the flow exiting the pump outlet nipple 30 in Fig. 5 is horizontal. And, the conduit connecting this pump outlet to the nozzle 16 appears to direct the water flow vertically downward as illustrated in Figs. 5 and 7. The "vanes 32" (40) are also illustrated as oriented vertically, or parallel with the water flow.

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Therefore, the water flow would not appear to "hit" the vanes 32 as disclosed and argued.

6. Claims 8 and 9 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 8 recites a "plunger knob" 34. Implementation of this subject matter is neither disclosed nor evident to the examiner. The "valve plate lifter 32" illustrated in Fig. 6 appears to engage the pump intake port 20. The structure of the paddle wheel to enable it to be lifted is not disclosed.

Applicant argues at pages 7-8 of the response this subject matter is clearly disclosed. The examiner can not agree. While a mechanism does appear to be illustrated in Fig. 6, how such cooperates as a "valve plate lifter 32" is not understood. Particularly, even if the valve plate 26 could be raised (no disclosure as to how), it appears the previously discussed water flow would still pass through the paddle wheel plates/discs rendering unclear any "steady flow of water to the nozzles."

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 4-6, 8, 9, 11, 12, 14 and 16, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kah, Jr. et al. and Kah, Jr.

The Kah, Jr. et al. ('560) reference discloses a water moving apparatus comprising: a paddle wheel 42 including vanes 60 and an opening 56; a plunger knob 52; a nozzle 30. Re claim 6, the initial statement of intended use (pedicure foot bath), and all other functional implications related thereto, have been considered but do not appear to impose any patentably distinguishing structure over that disclosed by '560. Re claim 14, the '560 opening is perpendicular in the same sense as with applicant's disclosed invention. Therefore, '560 teaches all claimed elements except for the provision of a pump.

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Although the '560 sequencing valve does not include a pump, as claimed, attention is directed to the Kah, Jr. ('480) reference which discloses an analogous sequencing valve which further includes a pump 140 (Fig. 5). Therefore, in consideration of '480, it would have been obvious to one of ordinary skill in the sequencing valve art to associate a pump with the '560 sequencing valve as being one well known source of pressurized water which is required for use with the '560 valve.

Applicant's arguments at pages 8-9 of the response '560 have been fully considered but do not appear to address the prior art as actually applied to the claimed invention. Applicant argues at page 9 of the response that the functional language distinguishes the claimed invention. The examiner can not agree, and notes it is well settled that functional recitations do not impart structural limitations to product or apparatus claims.

9. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

10. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

A handwritten signature in black ink, appearing to read 'Robert M. Fetsuga', is written over the typed name and title.

Robert M. Fetsuga
Primary Examiner
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